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United States District Court
~~IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA~~
~~COUNTY OF SAN DIEGO~~
Southern District of San Diego

JESUS TINA,
ROSARIO TINA, Pro se
Plaintiffs ,
vs.
HOME CAPITAL FUNDING, AMERICAN HERITAGE FINANCIAL,COUNTRYWIDE HOME LOANS, WELLS FARGO BANK DBA AMERICA'S SERVICING COMPANY, RICARDO FARIAS and MARIA FARIAS,
Defendant(s),

Case No '08 CV 1167 JM NLS

EX PARTE APPLICATION AND SUPPORTING DECLARATION OF (NAME OF PLAINTIFFS) FOR TEMPORARY RESTRAINING ORDER/ PRELIMINARY INJUNCTION AND ORDER TO SHOW CAUSE,AND CERTIFICATION

Plaintiffs, JESUS TINA, & ROSARIO TIN, Pro Se, hereby applies for an Ex Parte Temporary Restraining Order/Preliminary Injunction against the Defendants HOME CAPITAL FUNDING, AMERICAN HERITAGE FINANCIAL, COUNTRYWIDE HOME LOANS and WELLS FARGO BANK d/b/a AMERICA'S SERVICING COMPANY, and as grounds therefore would state as follows:

1. Plaintiffs requests a temporary restraining Order to enjoin and restrain the Defendants named herein, their agents, servants and employees from scheduling or executing a proposed

Trustee's sale in regard to a non-judicial foreclosure action without judicial oversight and without a valid Court Order, relating to an alleged Notice of Default filed in the San Diego County Recorder's Office, and further to require Home Capital Funding, American Heritage Financial, Countrywide Home Loans and Wells Fargo Bank d/b/a America's Servicing Company to appear and show cause why the relief requested in this application should not be granted, and to produce in open Court the original promissory note with all endorsements and attachments to establish Defendants right and entitlement to conduct said non-judicial Trustee's Sale.

2. Plaintiffs have filed contemporaneously herewith a Complaint for Fraud, for Deceptive and Unfair Trade Practices in violation of California Business and Professions Code section 17200, and for Declaratory and Injunctive relief, which Complaint is currently pending before the Superior Court. Plaintiffs requests that this Honorable Court enjoin and restrain the scheduling and execution of any non-judicial Trustee's sale pending the resolution of the Plaintiff's claims as set forth in Plaintiff's Complaint for Fraud, Deceptive and Unfair Trade Practices, Declaratory and Injunctive Relief. Attached hereto and made a part hereof as Plaintiff's **Exhibit "A"** is a copy of said Complaint.

3. This application is made pursuant to California Code of Civil Procedure 526. Plaintiffs is entitled to the relief requested, including but not necessarily limited to enjoining and restraining the Defendants from scheduling or executing a Proposed Trustee's Sale of the subject property pending resolution of Plaintiff's claims on the merits.

4. The scheduling or executing by Defendants of a proposed Trustee's sale would fall outside of the authority of the Defendants, if said Defendants are unable to produce the original signed promissory note with all attachments showing their legal entitlement to schedule and conduct said Trustee's sale. Should said sale be permitted to go forward without the proper legal authority and entitlement to do so, Plaintiffs would be irreparably injured in that Plaintiffs would lose all right, title and interest in and to his unique real property, would lose all of his equity in the subject property, would lose the right of possession and to live in the subject property, the right to rent or lease said property, lose his right of quiet enjoyment of the property, would be uprooted from the community, and would suffer great personal injury, including but not limited to defamation of Plaintiff's credit, the infliction of emotional distress upon Plaintiffs and other injury and damages personal to Plaintiffs. Plaintiffs will suffer these injuries, even if his claims are meritorious, unless Defendants are enjoined and restrained. Once Plaintiffs have suffered the injury, any pecuniary amount would be inadequate to compensate Plaintiffs for his injuries, making said injury irreparable.

5. Plaintiffs further contends that Defendants have not properly applied Plaintiff's payments to the account maintained by Defendants, and may have made incorrect interest rate adjustments, incorrect tax impound amounts and may have otherwise misapplied Plaintiff's payments. Plaintiffs further requests that Defendants appear and provide a detailed analysis of the amount Defendant contends is due and owing on the note and deed of trust at issue. Unless and until Defendants can

provide said detailed account as to the amount Defendant(s) contends is due and owing, Defendant should not be permitted to schedule or conduct the proposed Trustee's sale, which would be in derogation of the rights of Plaintiffs.

6. Plaintiffs would be entitled to damages to compensate Plaintiffs for all detriment proximately caused by the wrongful conduct of the servicer or Trustee pursuant to California Civil Code Section 3333. Until the Court is able to make such a determination, Defendants should be enjoined from going forward with any proposed Trustee's sale.

7. Plaintiffs have no other adequate remedy at law.

8. Plaintiffs requests that this Honorable Court grant the relief on an ex parte basis without notice to the other side, in that the threatened proposed Trustee's sale is imminent, and there is insufficient time for Defendants to be heard in opposition prior to the threatened injury taking place. Further, were Defendants given advance notice concerning this relief, Defendants would, in all probability, seek to accelerate the injuries sought to be apprehended.

9. The relief requested should be granted because the injury and harm that would be suffered by Plaintiffs is greater than the potential injury or harm to Defendants, and when balanced, the greater harm would be suffered by Plaintiffs and the equities in this matter tip in favor of the Plaintiffs .

10. The public interest would be served in that granting the requested relief would protect the public from fraud, Deceptive and Unfair Trade Practices, predatory lending practices, and other violations of California law, including

Deceptive and Unfair Trade Practices in the conduct of the mortgage lending business, and would prevent homeowners in the community from summarily, without any judicial oversight, losing their homes and from becoming homeless and becoming a burden on the community.

11. Attached hereto and in support of this application for Ex Parte Temporary Restraining Order/Preliminary Injunction and Order to show cause is Plaintiff's sworn Declaration attesting The truthfulness of the facts and allegations contained in this application.

12. Plaintiffs requests that this Honorable Court grant the requested relief without bond in that Plaintiffs is unable to afford or to pay a bond of any kind or type, and that such a Bond requirement would have an inequitable effect on the ability of Plaintiffs and other members of the public to obtain redress of their grievances through the Courts and would have a negative effect on public access to the Courts.

13. Other grounds to be argued ore tenus.

VERIFICATION

We, the Plaintiffs herein, do hereby verify under penalty of perjury, that I have read the foregoing Application and that the facts and allegations contained therein are true and correct. Dated this 30 day of June, 2008.

CERTIFICATE OF SERVICE

I (WE) HEREBY CERTIFY that a true and correct copy of the Foregoing Application for Ex Parte Temporary Restraining Order/ Preliminary Injunction has been furnished to the following:

Defendants, Home Capital Funding at 3131 Camino Del Rio North, Suite 400, San Diego, CA 92108; To Defendant Countrywide Home Loans at P.O. Box 10219, Van Nuys, CA 91410; to Defendant Wells Fargo Bank d/b/a America's Servicing Company, at P.O. Box 10388, Des Moines, IA 50306; Defendants Ricardo and Maria Farias at 2856 Carnegie Way, Marietta, Georgia 30064 by U.S. mail, with sufficient postage attached, this 30 day of June, 2008.

Rosario R. Tina

ROSARIO R. TINA,

Jesus Tina

JESUS G. TINA
Plaintiffs
Address: 863 Glencoe Drive
San Diego, CA 92114
Phone 619-813-7844